

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

J. W. MOUNCE

Claimant

VS.

STATE OF KANSAS

Respondent

AND

STATE SELF INSURANCE FUND

Insurance Carrier

Docket No. 219,712

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on March 20, 1997.

ISSUES

The Administrative Law Judge granted claimant's request for medical treatment to claimant's right shoulder but denied the request for treatment to the left shoulder on the grounds that claimant did not give notice within ten days as required by K.S.A. 44-520. The Order designates Christopher W. Siwek, M.D., as the authorized treating physician and indicates that claimant is to receive temporary total disability if he is taken off work by Dr. Siwek. Respondent contends that claimant failed to give timely notice of the injury on the right shoulder, as well as the left shoulder, and argues that treatment on the right shoulder should also be denied. Claimant does not appeal the decision to deny treatment for his left shoulder.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Administrative Law Judge should be affirmed.

Claimant testified that his work duties for respondent included use of chain saws, machetes, posthole diggers, and shovels. Beginning in July 1996 he experienced problems with his shoulders while performing those work activities. He sought medical treatment from his family physician and was referred for evaluation by specialists. Claimant was first referred to Thomas W. Kneidel, M.D., who diagnosed tendonitis, and then to Dr. Siwek who, based upon an MRI study, diagnosed a rotator cuff tear in the right shoulder.

Claimant testified that his work activities made the shoulder worse after the initial onset of symptoms in July, including the work performed in September 1996. Although claimant testified he notified the maintenance supervisor, Mr. Gary Ward, as soon as he first saw his family physician in August, Mr. Ward denies receiving notice until September 26 or 27. In either event, it appears the testimony establishes an ongoing aggravation through at least September 25, 1996, the date the Administrative Law Judge treated as the date of accident. Respondent acknowledges receiving notice not later than September 27, 1996. On that basis, the Appeals Board agrees with and affirms the finding by the Administrative Law Judge.

WHEREFORE, the Appeals Board finds that the Order of Administrative Law Judge Bryce D. Benedict, dated March 20, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

c: Tom E. Hammond, Wichita, KS
Robert E. North, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director